

MINUTES
of the
WATER AND NATURAL RESOURCES COMMITTEE
July 17-18, 2003
Red River Conference Center

The July 17, 2003 meeting of the Water and Natural Resources Committee was called to order by Senator Carlos R. Cisneros, chair, at 10:05 a.m. in the Red River Conference Center.

PRESENT

Sen. Carlos R. Cisneros, chair
Rep. Joe M Stell, vice chair
Sen. Sue Wilson Beffort (July 18)
Sen. Dede Feldman
Rep. Larry A. Larranaga
Rep. Brian K. Moore
Rep. Andy Nunez
Sen. Mary Kay Papen
Sen. H. Diane Snyder
Rep. Robert White

Advisory Members

Rep. Anna M. Crook
Sen. Gay G. Kernan
Rep. Rhonda S. King
Sen. Nancy Rodriguez
Rep. Mimi Stewart

ABSENT

Sen. Joseph J. Carraro
Rep. Joseph Cervantes
Sen. Mary Jane M. Garcia
Rep. Dona G. Irwin
Rep. James Roger Madalena
Sen. Shannon Robinson
Rep. Henry Kiki Saavedra
Rep. Don Tripp

Rep. Ray Begaye
Sen. Clinton D. Harden, Jr.
Sen. Timothy Z. Jennings
Sen. Steve Komadina
Rep. Ben Lujan
Rep. Danice Picraux
Sen. Leonard Lee Rawson
Sen. Leonard Tsosie
Rep. Eric A. Youngberg

(Attendance dates are noted for those not present for the entire meeting.)

Staff

Gordon Meeks
Jon Boller

Guests

The guest list is in the meeting file.

Thursday, July 17

MINING REMEDIATION

Leroy Apodaca, manager of administrative services, Molycorp, addressed the two rock piles that have been in the news lately. Mr. Apodaca explained that the molybdenum mine had been in operation since 1921. In the 1960s, the company began developing the open pit part of the mine and began producing ore from the open pit in 1965. The company ceased operation of the open pit portion of the mine in 1983. The piles of rock visible from the highway between Questa and Red River are the removed overburden. State law requires the company to have a closeout plan that includes a stability review of the rock piles to ensure that they will not slide onto the highway or into the valleys below. Molycorp submitted a study done by an independent contractor to the Energy, Minerals and Natural Resources Department that identified two of the rock piles as being susceptible to saturation and mud slides with possible catastrophic collapse. One rock pile has been moving since 1968, Mr. Apodaca said, so the company stopped adding to it. Molycorp hired five experts to determine what the risks are and to identify what the significant precipitation would be to trigger a collapse and to monitor rainfall in real time.

Questions and committee discussion addressed:

- dates of the past open pit mining;
- revegetation of the site;
- precedents for rock pile collapses;
- area geology;
- the mine's work force and payroll;
- the mine's effect on the stream system;
- the company's necessary profitability to be able to pay for environmental compliance; and
- composition of the independent review board that issued the negative report on the rock piles.

The chair introduced Red River's Mayor Craig Swaggerty, who welcomed the committee to Red River and praised Senator Cisneros for representing the area so well.

FINANCING WATER AND SANITATION DISTRICTS

John Painter, El Prado Water and Sanitation District, told the committee that water and sanitation districts have more power than mutual domestic water users' associations, but that the Water and Sanitation District Act needs to be updated. He referred to Senator Nava's bill from the 2003 regular session, Senate Bill 447. He thanked the legislature for approving measures that allow water and sanitation districts to be established in any county. Additionally, he said that districts would like to be empowered to pay board members and to be included under the forfeiture exemption section of the water rights for 40-year planning.

He said that districts also have concerns about the proliferation of domestic wells and their impairment of water and sanitation districts' water rights. He told the committee that he

would like to have the same power as cities to limit domestic wells when the district can provide water services. He said that the lack of standards for domestic wells may lead to contamination of ground water. Mr. Painter told the committee that it is a very serious dilemma that people do not want to pay for water services. Districts are unable to raise rates to cover the costs of providing water and sanitation services. Water system user fees do not cover the cost of operation of the system. He said that water and sanitation districts need the ability to levy a one-fourth percent gross receipts tax to help pay for water. He added that the costs for environmental assessments and meeting new regulations require additional sources of revenues.

Joy Garcia, manager of El Prado Water and Sanitation District, said that the district is required to provide a lot of documentation to the state, documentation that costs a lot to compile and submit. The New Mexico Finance Authority's grant planning assistance does not cover costs of developing the project.

Questions and committee discussion addressed:

- the definition of cluster wells;
- the number and powers of water and sanitation districts in the state;
- rates charged to customers by districts; and
- taxation powers of districts.

FINANCING CONSERVATION AND RIVER RESTORATION

Paul Paryski, lobbyist for the Alliance for the Rio Grande, explained that the alliance is a coalition of 12 organizations and introduced the other speakers.

Steve Harris, Rio Grande Restoration, told the committee that a major part of the coalition's goals is to develop a program for protection of the Rio Grande. He said that the brochure distributed with the coalition's presentation is a compilation of efforts to restore the Rio Grande. These efforts include: the Pueblo of Santa Ana's work to remove non-native vegetation species along six miles of the river; the Pueblo of Sandia's similar effort; the Save Our Bosque Task Force's restoration of over 400 acres south of Bosque del Apache; the City of Albuquerque's open space policy; the Endangered Species Collaborative program of restoration of the silvery minnow habitat; salt cedar eradication efforts sponsored by the state; and several federal initiatives such as the Corps of Engineers, the Farm Bill Super Conservation Reserve Enhancement program and Environmental Protection Agency watershed grants.

Mr. Paryski told the committee that one of the reasons for the presentation is to call the legislature's attention to the federal funding requirement that the state provide matching funds.

Beth Bardwell, World Wildlife Fund, asked the committee to consider water users fees as a potential funding source for restoration and augmentation of water supply in New Mexico. She summarized her efforts to date on developing the water user fee concept. Her discussions have received varied reactions. She emphasized that there is a funding gap in the state for water projects. New Mexico might need \$100 million a year for water-related projects and has only

committed 10 percent of that so far. Having users pay the cost would be a fair, broad-based system to fund water augmentation efforts. She said that one of the expenses that water user fees could pay for is statewide metering. She said that the benefits of metering are: it protects water rights, provides data for planning and reduces consumption up to 20 percent. She closed by saying that user fees could also allow the state to buy water rights for public purposes.

Questions and committee discussion addressed:

- the use of goats for salt cedar eradication;
- agriculture water rights holders being charged twice for water they have already paid for under a water user fee scheme;
- unconstructive denigration of agriculture and rural economies;
- the potential for water user fee benefits to be directed back to users;
- ways to structure fees so that large urban users pay a greater percentage;
- availability of federal funds;
- monitoring of river restoration projects;
- cooperation with cities and irrigation districts in the collection of fees;
- only metered water being charged the fee, or estimating use and charging the fees on that basis;
- administration of the fund;
- the role of the Water Trust Board;
- the position of the governor and the Blue Ribbon Tax Reform Commission;
- basis of the fee on usage rather than rights and water rights adjudications;
- the highest and best use of water and who makes that determination;
- evaporation losses and how to overcome them;
- low-water-use crops study;
- existing fees on water use; and
- the inability of the cost of production of agriculture to be recouped in selling of the product and whether a fee can be adjusted or directed in a way that does not harm agriculture.

WATER HARVEST SYSTEMS

Mr. Paryski said that the Sierra Club will be proposing two bills on water harvesting. He said that a pilot effort at one school harvested 1.5 acre-feet in a year. He said that one bill would establish a pilot water harvesting system at the State Capitol and the other bill would require water harvesting capabilities in the design of all new commercial construction in the state. He said that there may be a need for standards for cisterns and other components of water harvesting systems.

WATER SERVICE FEES

Janie Chermak, economics professor at the University of New Mexico, reported the results of her research on water service fees in residential urban centers. She said that the price of water does not differ much between the East and the West or between water-scarce or water-rich areas. She said that consumers will use water if it is cheap and that prices can be a signal of

the abundance of water or its scarcity. She said that a 10-percent reduction in farming may provide lots of water, but that the prices cities charge or pay may not reflect the real cost. Leasing of water in hard times would work, if the leasing price made it worthwhile to the water owner. An extensive discussion of the role of prices in water consumption followed. Some committee members believed that other factors are more important. Some made the point that the rich are different, and that attitudes change with income level.

The committee recessed at 5:30 p.m.

Friday, July 18

John Szerdi, Iasis (a resort in Taos with water recycling and water harvesting systems), described water and wastewater system problems of the Village of Questa and his organization's proposal to assist the village. Questa currently does not have enough water rights to serve its population, and it currently overuses approximately 57 acre-feet per year. He detailed the community's water accounts, pointing out that Questa only gets about 37 percent return flow credit from its 77 acre-feet annual use rights. Demand, however, is as high as 167 acre-feet. The village needs to invest in water and sewer hook-ups, along with system recycling so that it can get 100 percent return flow credits. If the system can be improved to recycle all its water, the village would not have to buy new water rights.

Questions and committee discussion addressed:

- how the village's water credit is determined; and
- the cost of \$4 million needed for the project (Mayor Charlie Gonzalez said the village has 2,200 residents and hopes to upgrade the system for a long-term solution rather than just buying water rights and meeting minimum standards as a short-term solution).

John Stomp, Albuquerque water program manager, told the committee that the city's program emphasizes conservation, reuse and new water supply. Last year, the city pumped 105,000 acre-feet, its lowest level of use since 1985. The city is now using its San Juan/Chama water for the first time. Albuquerque's reuse projects may seem counterintuitive, but they are not when the technical elements are understood. He said that the city is promoting the use of shallow ground water in the valley for lawns and landscaping because this shallow ground water is unsuitable for drinking. Thus, it makes sense to reduce deeper aquifer pumping of cleaner water needed for drinking for those uses that do not require that level of quality.

Michael Chapman, a home builder in Santa Fe, explained what measures the homes he builds have that conserve water. He invited the committee to tour one of his homes during a future meeting.

Questions and committee discussion addressed:

- side-channel low-flow toilets;
- refrigerated air compared to evaporative cooling;

- comments by Mark Christianson of PNM stating that switching to air conditioning increases the average electric bill from \$21.00 to \$70.00 a month, but results in a 30 percent water savings by reducing the average consumption from 960 gallons to 620 gallons;
- the cost of \$6,500 for the Chapman home water reuse system; and
- the water conservation fee.

FINANCING ENDANGERED SPECIES RECOVERY

Todd Stephenson, deputy director of the Department of Game and Fish explained to the committee that the Endangered Species Collaborative has been meeting for three years to develop a 10-year recovery plan for the silvery minnow. Twenty-five million dollars in federal funds have been made available to promote recovery of species and to establish creative ways to use water, preserve species and meet compact obligations. However, the federal government requires a 25 percent match from non-federal sources, which will total \$3 million per year for 10 years.

Questions and committee discussion addressed:

- specific uses of appropriated money;
- habitat restoration, research for long-term fixes, monitoring and refugia operations;
- purchase of water rights;
- many other factors besides water that affect the silvery minnow;
- Elephant Butte storage water and Texas' agreement to store more water upstream to reduce evaporation;
- who the water belongs to;
- underdelivery triggering a lawsuit with Texas;
- the Fifth Amendment to the U.S. Constitution prohibiting takings of property without just compensation;
- the biological opinion of the U.S. Fish and Wildlife Service;
- the role of the U.S. Army Corps of Engineers; and
- appeal of the federal Tenth Circuit Court of Appeals opinion.

HYDROGRAPHIC STUDIES

James Gosz, biology professor at the University of New Mexico, described the National Science Foundation challenge grant to the committee, and that getting matching funds from the state is a way to make sure that the project is something that relates to the state's needs.

Rob Bowman, hydrology professor at the New Mexico Institute of Mining and Technology, and Karl Wood, director of the Water Resources Research Institute at New Mexico State University, told the committee that the EPSCOR grants from the National Science Foundation are the best opportunity for New Mexico to compete with neighboring states for major federal research grants. New Mexico's problem has been, and is, the lack of a state match for federal research dollars. Six universities in New Mexico want to participate. Last year, New Mexico only got \$4 million while other states got more than \$40 million.

Mark Fesmire, Office of the State Engineer, told the committee that the universities are proposing to do studies that need to be done anyway in relation to water rights adjudications, and that it would not be good to duplicate efforts.

Questions and committee discussion followed regarding:

- the private sector's role; and
- use of existing technologies rather than duplication of available work.

A motion to adopt minutes was passed.

The committee adjourned at 12:30 p.m.